

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #5	CCRB Case #: 202007713	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/11/2020 12:07 AM, Wednesday, 11/11/2020 12:14 AM	Location of Incident: Garrison Avenue and Hunts Point Avenue; 41st Precinct stationhouse	Precinct: 41	18 Mo. SOL 5/11/2022	EO SOL 5/11/2022	
Date/Time CV Reported Wed, 11/11/2020 4:18 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/23/2020 11:24 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Romeo Poliard	17518	962021	041 PCT
2. POF Cynthia Lopez	07046	963616	041 PCT
3. LT Jose Garcia	00000	943276	041 PCT
4. POM Joel Feliz	24505	962401	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Abel Dupres	13626	963498	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Romeo Poliard	Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)	
B.POM Romeo Poliard	Force: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard used physical force against § 87(2)(b)	
C.POM Romeo Poliard	Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)	
D.POM Romeo Poliard	Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)	
E.POM Romeo Poliard	Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)	
F.LT Jose Garcia	Abuse: At Garrison Avenue and Hunts Point Avenue in the Bronx, Lieutenant Jose Garcia seized § 87(2)(b) property.	
G.POM Romeo Poliard	Force: At the 41st Precinct stationhouse, Police Officer Romeo Poliard used physical force against § 87(2)(b)	
H.POM Romeo Poliard	Discourtesy: At the 41st Precinct stationhouse, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)	
I.POM Joel Feliz	Discourtesy: At the 41st Precinct stationhouse, Police Officer Joel Feliz spoke discourteously to § 87(2)(b)	
J.LT Jose Garcia	Discourtesy: At the 41st Precinct stationhouse, Lieutenant Jose Garcia spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On November 11, 2020, § 87(2)(b) filed this complaint by phone with IAB, generating original log 2020-26473. The CCRB received the complaint on November 23, 2020.

On November 11, 2020, at approximately 12:07 a.m., Lieutenant Jose Garcia and Police Officers Romeo Poliard and Cynthia Lopez of the 41<sup>st</sup> Precinct stopped § 87(2)(b) for running a red light at the intersection of Hunts Point Avenue and Garrison Avenue in the Bronx. PO Poliard allegedly told § 87(2)(b) to “get the fuck out” of his car (**Allegation A: Discourtesy**, § 87(2)(g)). § 87(2)(b) refused to provide ID for the officers to issue him a summons, so Lt. Garcia placed § 87(2)(b) under arrest for aggravated unlicensed operation of a motor vehicle, unlawful possession of marijuana, driving without a license, and running a red light (Board Review 01). Once § 87(2)(b) was out of the car, PO Poliard allegedly squeezed § 87(2)(b) genitals while frisking him (**Allegation B: Force**, § 87(2)(g)). When § 87(2)(b) asked PO Poliard, “You want to touch my dick, man?” PO Poliard responded, “Damn right” (**Allegation C: Discourtesy**, § 87(2)(g)). PO Poliard allegedly told § 87(2)(b) to “shut the fuck up” (**Allegation D: Discourtesy**, § 87(2)(g)). PO Poliard escorted § 87(2)(b) to a police vehicle and told Police Officers Joel Feliz and Abel Dupres of the 41<sup>st</sup> Precinct regarding § 87(2)(b). “He’s a dumbass, search him” (**Allegation E: Discourtesy**, § 87(2)(g)). Lt. Garcia had § 87(2)(b) vehicle brought back to the stationhouse (**Allegation F: Abuse of Authority**, § 87(2)(g)).

Once at the 41<sup>st</sup> Precinct stationhouse, PO Poliard allegedly squeezed § 87(2)(b) between his legs while in the cells at the stationhouse (**Allegation G: Force**, § 87(2)(g)). While in the cells, PO Poliard, PO Feliz, and Lt. Garcia all used profanity with § 87(2)(b) (**Allegation H-J: Discourtesy**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

The investigation obtained BWC footage (Board Review 02-07, summarized in Board Review 08), but the footage does not comprehensively capture the beginning of the incident § 87(2)(b). All references to video evidence below refer to the timestamp in the video player, and not to the on-screen timestamp.

§ 87(2)(b)

## Findings and Recommendations

### Allegation (A) Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)

§ 87(2)(b) provided testimony to the investigation during three phone calls (Board Review 09-11). § 87(2)(b)

§ 87(2)(b) In his statements to the CCRB, he testified that PO Poliard told him to “get the fuck out of the car” at the beginning of the stop, before § 87(2)(b) exited his vehicle. He did not remember if PO Poliard said anything before that because he “blocked it out,” and he did not remember what PO Lopez or Lt. Garcia were doing because he was “meditating.”

PO Poliard denied § 87(2)(b) account of this portion of the incident, as he testified that § 87(2)(b) was already out of the vehicle and speaking with Lt. Garcia when he first approached (Board Review 12-13). He did not remember whether § 87(2)(b) got out of his car on his own or if Lt. Garcia instructed § 87(2)(b) to get out of the car (Board Review 12-13).

PO Lopez did not remember either herself or PO Poliard speaking to § 87(2)(b) at any point (Board Review 14). Lt. Garcia did not testify to this allegation.

As noted above, none of the of the officers activated their BWCs at the beginning of the stop, and § 87(2)(b) had already exited the vehicle by the time each clip starts. Lt. Garcia's BWC footage shows that PO Poliard was standing outside § 87(2)(b) vehicle for at least a few seconds before searching § 87(2)(b) (Board Review 01, at approximately 00:00). However, § 87(2)(b) is not visible until PO Poliard searches him, and this part of the video does not contain any audio.

§ 87(2)(g)

**Allegation (B) Force: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police**

**Officer Romeo Poliard used physical force against § 87(2)(b)**

**Allegation (C) Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police**

**Officer Romeo Poliard spoke discourteously to § 87(2)(b)**

**Allegation (D) Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police**

**Officer Romeo Poliard spoke discourteously to § 87(2)(b)**

It is undisputed that § 87(2)(b) did not provide his license or other identification to the officers. It is also undisputed that PO Poliard frisked and searched § 87(2)(b) after he was placed under arrest.

§ 87(2)(b) alleged that PO Poliard grabbed his groin and "fondled" his testicles while frisking and searching him. He did not remember how many times PO Poliard grabbed him or for how long, but he said that PO Poliard did so more than once. As will be detailed below, § 87(2)(b) also incorrectly testified that PO Poliard touched him in the same manner while searching him later in the cells of the stationhouse. After the incident, § 87(2)(b) went to the hospital for pain to his genitals. When asked if PO Poliard's actions caused the pain, § 87(2)(b) answered, "I would assume so." § 87(2)(b) recounted that he went to Lincoln Hospital and spoke with a psychiatrist who told him that there was nothing they could do for him. The investigation sent HIPAA release forms to § 87(2)(b) in order to obtain his medical records, but he did not respond and did not return the forms.

§ 87(2)(b) also recounted that, while PO Poliard searched him, he asked PO Poliard why he was feeling him around his "dick." PO Poliard responded, "Shut the fuck up." § 87(2)(b) was standing such that he was facing the rear of his car, which was to his left. He did not strongly remember where PO Poliard was, but he believed PO Poliard was standing in front of him. He did not remember PO Poliard ever standing behind him.

It should be noted that, in his 50H hearing testimony, § 87(2)(b) never alleged that PO Poliard squeezed his genitals and did not claim to have suffered any physical injury during the incident.

PO Lopez's BWC video captures audio of § 87(2)(b) objecting to the manner in which PO Poliard is searching him beside his vehicle (Board Review 05, at approximately 00:30). At no point does the footage show PO Poliard telling § 87(2)(b) to "shut the fuck up." The footage does show that § 87(2)(b) asked PO Poliard, "You want to touch my dick, man?" PO Poliard replied, "Damn right." The footage does not capture the exact manner of the search and does not confirm whether or not PO Poliard squeezed or applied unnecessary pressure to § 87(2)(b) groin that would exceed the normal scope of a frisk. It is clear from the footage that PO Poliard was standing behind § 87(2)(b) while searching him.

PO Poliard recalled that § 87(2)(b) complained about being frisked and searched near his genitals. He confirmed that, as with any frisk, he did frisk § 87(2)(b) groin because people can conceal weapons or contraband in that area. He denied that he grabbed, squeezed, or fondled § 87(2)(b) genitals. He noted that a frisk is always "gonna be uncomfortable" for the person being



frisked. He did not remember § 87(2)(b) ever complaining of pain.

When asked to explain why he replied, “Damn right,” to § 87(2)(b) asking if him if he wanted to touch § 87(2)(b) penis, PO Poliard testified that he answered in the affirmative because he had previously found guns during frisks of suspect’s groins. He also acknowledged that § 87(2)(b) was being sarcastic and belligerent, and so “[he] gave it right back” by responding in kind. He also said that his remark was a “heat of the moment” decision.

Lt. Garcia confirmed that PO Poliard searched § 87(2)(b) but was unable to describe how he did so (Board Review 15). PO Lopez testified that PO Poliard definitely searched § 87(2)(b) but she did not see PO Poliard squeeze § 87(2)(b) between his legs.

Due to the conflicting testimony between § 87(2)(b) and the PO Poliard, and in the absence of further evidence, the investigation was unable to determine if PO Poliard squeezed § 87(2)(b) genitals in a manner which caused pain and constituted physical force. Based on PO Lopez’s BWC, the investigation determined that PO Poliard did not tell § 87(2)(b) to “shut the fuck up.”

Patrol Guide Procedure 200-02 requires that officers “render [their] services with civility and courtesy” (Board Review 16).

As the investigation was unable to determine if PO Poliard used physical force against § 87(2)(b) during the frisk, it is recommended that **Allegation B** be closed as § 87(2)(g).

Because PO Poliard did not tell § 87(2)(b) to “shut the fuck up” as alleged, it is recommended that **Allegation C** be closed as § 87(2)(g).

§ 87(2)(g) PO Poliard did not need to respond, and he certainly did not need to respond with profanity and in a manner which indicated to § 87(2)(b) that PO Poliard *did* want to touch his penis. § 87(2)(g)

**Allegation (E) Discourtesy: At Garrison Avenue and Hunts Point Avenue in the Bronx, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)**

PO Poliard’s BWC footage shows that he brought § 87(2)(b) to PO Feliz and PO Dupres so they could transport him to the stationhouse. PO Poliard told them, in reference to § 87(2)(b) “He’s a dumbass, search him” (Board Review 02, at approximately 01:13).

PO Poliard said that he made the comment in the “heat of the moment” and because § 87(2)(b) was giving PO Poliard a “hard time.” He added that none of this would have happened if § 87(2)(b) had cooperated from the beginning. He again noted that § 87(2)(b) was talking “smack,” so he wanted to “give it right back.” It should also be noted that PO Poliard, speaking on the record during his CCRB interview, referred to § 87(2)(b) as “a complete asshole.”

Patrol Guide Procedure 200-02 requires officers to “render [their] services with civility and courtesy” (Board Review 16).

§ 87(2)(g)

**Allegation (F) Abuse of Authority: At Garrison Avenue and Hunts Point Avenue in the Bronx, Lieutenant Jose Garcia seized § 87(2)(b) property.**

It is undisputed that Lt. Garcia supervised the process of officers transporting § 87(2)(b) vehicle to the stationhouse and vouchering it for safekeeping (Board Review 18).

Patrol Guide Procedure 208-03 states, “After arrest has been effected and prisoner has been handcuffed, have vehicle or other conveyance **not required as evidence** safeguarded, if appropriate”

(Board Review 19) (emphasis original).

§ 87(2)(b) vehicle could not be left in the roadway at the site of the stop. § 87(2)(g)

**Allegation (G) Force: At the 41st Precinct stationhouse, Police Officer Romeo Poliard used physical force against § 87(2)(b)**

§ 87(2)(b) testified PO Poliard searched him in the cell area in the same manner as he had at the scene of the arrest, and he specified that PO Poliard grabbed his testicles and “squeezed” his penis. § 87(2)(b) similarly did not remember how many times PO Poliard squeezed his genitals, but he noted that he did not physically react when PO Poliard did so. His only response was telling PO Poliard, “Get the fuck off me.” PO Poliard responded by telling him, “This is my house.”

§ 87(2)(b)

The CCRB obtained comprehensive BWC footage of § 87(2)(b) interaction with officers at the stationhouse before being placed in the cell. PO Poliard’s BWC footage shows PO Dupres and PO Feliz searching § 87(2)(b) near the stationhouse desk (Board Review 03, at approximately 01:30). At 02:43, PO Poliard approaches § 87(2)(b) and searches him as well. PO Poliard pulls the string out of § 87(2)(b) pants and quickly searches the pockets of his pants and sweatshirt. At no point does PO Poliard reach between § 87(2)(b) legs. At 05:31, PO Dupres frisks § 87(2)(b) again in the cell area. During this search, § 87(2)(b) asks PO Dupres, “The fuck you keep feeling my dick for, man?” as PO Dupres frisks him around his groin. The BWC does not have a view of the front of § 87(2)(b) body at this moment. Beyond asking PO Dupres why he was “feeling [his] dick,” § 87(2)(b) did not say anything about PO Dupres causing him pain.

As will be discussed below, the BWC footage shows that PO Poliard did tell § 87(2)(b) “This is my house,” during the incident. However, it took place well before PO Dupres’ frisk of § 87(2)(b) in the stationhouse cells and well after PO Poliard’s search of § 87(2)(b) in front of the desk. PO Poliard also did not make the remark in response to § 87(2)(b) complaining about the manner of a frisk.

§ 87(2)(g)

**Allegation (H) Discourtesy: At the 41st Precinct stationhouse, Police Officer Romeo Poliard spoke discourteously to § 87(2)(b)**

**Allegation (I) Discourtesy: At the 41st Precinct stationhouse, Police Officer Joel Feliz spoke discourteously to § 87(2)(b)**

**Allegation (J) Discourtesy: At the 41st Precinct stationhouse, Lieutenant Jose Garcia spoke discourteously to § 87(2)(b)**

PO Poliard’s second BWC clip captures many officers using profanity with § 87(2)(b) while in the stationhouse cells.

When PO Feliz enters the cell area with PO Poliard’s BWC, § 87(2)(b) is spelling his name for the officers. PO Poliard, who had not yet seen § 87(2)(b) suspended driver’s license, advises him of the consequences of providing a false name, and § 87(2)(b) says that he provided his name ten times already (Board Review 03, at approximately 03:31). PO Poliard then says, “I hear you. § 87(2)(b) § 87(2)(b) replies § 87(2)(b)” One of the officers asks him

why he is cursing, and § 87(2)(b) says that PO Poliard already asked him for his name. At this point, PO Poliard walks up to § 87(2)(b) nears within inches of his face, and yells, “Because you’re not slowing down. All I heard is one letter.” § 87(2)(b) says something along the lines of, “So speed up.” PO Poliard says, “No, this is my house. I’m gonna do what the fuck I want to do, you understand me? This is my shit.” § 87(2)(b) says, “This is your shit?” PO Poliard says, “This is my shit. I’ll keep you here for like six hours, I don’t give a fuck.”

At 05:15, PO Dupres removes § 87(2)(b) handcuffs and has him stand against a wall. PO Feliz asks § 87(2)(b) “How old are you?” § 87(2)(b) says he does not know and then says, “Let’s play this fucking game.” When he says this, he heavily annunciates the “f” sound in “fucking.” PO Feliz tells him, “Stop spitting. Don’t spit at me.” § 87(2)(b) asks, “I spit at you?” PO Feliz says, “Yeah, you fucking spit at me.” PO Feliz does not make any motions consistent with being hit in the face with spit—he does not move away from § 87(2)(b) reach for his own face, or appear to wipe anything off his face. PO Feliz then calmly continues assisting PO Dupres with his frisk by occasionally holding § 87(2)(b) by his right arm. PO Feliz takes no other action against § 87(2)(b)

At 08:48, § 87(2)(b) tells Lt. Garcia, “Let’s go to Central Brooking.” Lt. Garcia says, “I don’t care, bro. I’ll go home. You go to Central Booking.” § 87(2)(b) says, “Okay, fine.” Lt. Garcia says, “Put him in the cell.” § 87(2)(b) and Lt. Garcia then briefly talk about a lawsuit that § 87(2)(b) says he is going to file. At 09:18, Lt. Garcia says to § 87(2)(b) “Get outta here.” He then says either, “You’re a fucking kid, man,” or, “You’re acting like a fucking kid, man.” While the exact statement is not decipherable in the footage, it is clear that he uses the word “fucking.”

PO Poliard did not remember making the profane remarks in the video footage, but he confirmed them upon reviewing the footage. He testified that he cursed at § 87(2)(b) because § 87(2)(b) cursed at him. He also said that § 87(2)(b) clearly did not understand him when he spoke to him “in English,” so he tried talking to him in a way that he thought he could understand.

Lt. Garcia did not remember if he called § 87(2)(b) a “fucking kid.” When shown the above-referenced portion of BWC footage, Lt. Garcia asserted that he is not using profanity and that he instead heard himself say, “You’re acting like a kid, man.” As Lt. Garcia denied that he used profanity, he did not provide a justification for doing so.

PO Feliz acknowledged telling § 87(2)(b) not to spit at him but did not remember using profanity. He testified that § 87(2)(b) intentionally annunciated his words in a manner that would naturally cause him to spit. As a result, spit landed on PO Feliz’s face. PO Feliz reviewed the BWC footage and denied that it captured him using profanity. He denied hearing himself say the word “fuck” or “fucking” and instead asserted that he said, “You spit at me.”

Patrol Guide Procedure 200-02 requires officers to “render [their] services with civility and courtesy” (Board Review 16). DCT Case 2017-17005 holds that discourteous remarks are permissible in situations that are “so chaotic that the duty of courteousness and professional behavior should be overridden by the immediate need to maintain order.” However, police may not use profanity when “just complaining about what had occurred.” The profanity itself must still be in furtherance of a “legitimate police purpose” (Board Review 17).

It is clear from the video footage that § 87(2)(b) repeatedly and profanely complained about officers arresting and searching him. However, § 87(2)(b) use of profanity never created a situation so chaotic that it overrode the responsibility of officers to act courteously and professionally. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Feliz denied using profanity and thus did not provide any justification for doing so. In a situation where § 87(2)(b) genuinely spit in his face, PO Feliz might have been justified in using profanity to issue commands to § 87(2)(b). However, the video footage shows a qualitatively different interaction, in which PO Feliz took no action consistent with § 87(2)(b) actually spitting

in his face. § 87(2)(g)

Lt. Garcia denied using profanity and thus did not provide any justification for doing so. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

#### Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Poliard has been a member of the NYPD for five years and has been a subject in two other CCRB complaints and three allegations, one of which was substantiated:
  - 201908261 involved a substantiated allegation of forcible removal to the hospital against PO Poliard. The Board recommended Formalized Training and the NYPD imposed Formalized Training.
  - PO Poliard is currently a subject in two other CCRB complaints and 13 allegations. The investigations into these complaints are ongoing.
  - § 87(2)(g)
- Lt. Garcia has been a member of the NYPD for 15 years and has been a subject in nine other CCRB complaints and 14 other allegations, of which one was substantiated:



- 200810343 involved a substantiated allegation of discourtesy against Lt. Garcia, in which he told a civilian to respect his “fucking uniform.” The Board recommended Command Discipline and the NYPD imposed Command Discipline B.
- Lt. Garcia is currently a subject in one other CCRB complaint and three allegations. The investigation into this complaint is ongoing.
- Lt. Garcia has been the subject of two additional discourtesy allegations, both of which were closed as unsubstantiated.
- PO Feliz has been a member of the NYPD for five years and has been a subject in four prior CCRB complaints and 13 allegations, none of which were substantiated.
  - PO Feliz is currently a subject in two other CCRB complaints and nine allegations. The investigations into these complaints are ongoing.
  - § 87(2)(g) [REDACTED]

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED] filed a Notice of Claim with the City of New York claiming psychological injury, humiliation, shock, insomnia, fear of police, seizure of property, lost wages, and medical expenses and seeking \$500,000 as redress (Board Review 23). § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad: 5

Investigator:	<u>Stephen J. DiFiore</u> Signature	<u>Inv. Stephen DiFiore</u> Print Title & Name	<u>February 12, 2022</u> Date
---------------	--	---	----------------------------------

Squad Leader:	<u>Daniel Giansante</u> Signature	<u>IM Daniel Giansante</u> Print Title & Name	<u>February 13, 2022</u> Date
---------------	--------------------------------------	--	----------------------------------

Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
-----------	--------------------	-----------------------------	---------------